No. _____

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

KENDRA MUSGRAVE,

Petitioner(s),

against

INEZ HOYOS, HON., ADMINISTRATIVE LAW JUDGE, HOUSING PART Q, CIVIL COURT OF THE CITY AND COUNTY OF NEW YORK,

Respondent(s)

On Petition For Writ Of Certiorari to the
United States Court of Appeals
For the Second Circuit

PETITION FOR WRIT OF CERTIORARI

KENDRA MUSGRAVE
Pro Se
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303-452-2854

QUESTIONS PRESENTED

1. Can courts under the Rooker-Feldman doctrine of abstention a) bar party who is a stranger to a proceeding, from a filing a federal claim for cause arising out of such proceeding; b) and make findings of fact and conclusions of law?
2. Can a civil judgment be enforced against a) parties joined in interest who have never filed such partnership in accordance with local, state, or federal statute, and there exists no legal recording of such partnership with any county or secretary of state or any federal database in relation thereto; b) otherwise against "John Doe," and "Jane Doe," each as a party?
3. Does Defendant have immunity from this federal claim?
4. Does a judge who contradicts statute or direct order violate his or her oath of office?

PARTIES TO THE PROCEEDING

Petitioner, Kendra Musgrave, *pro se*, 9985 Appletree Place, Thornton, Colorado 80260. Defendant, Inez Hoyos, a hearing officer, whose powers are derived from New York City Charter §§1041-1047 and the New York City Civil Court Act, assigned to Housing Part of New York City Civil Court, New York County (Manhattan).

TABLE OF CONTENTS

OPINIONS BELOW.....1

STATEMENT OF JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS....1

STATEMENT OF THE CASE.....1

REASONS FOR GRANTING THE WRIT.....6

II. COURTS CANNOT DENY JURISDICTION ON ROOKER FELDMAN AND ISSUE FINDINGS OF FACT OR CONCLUSIONS OF LAW. 12

III. COURTS CANNOT RULE UPON A THIRD PARTY LETTER, NOR SECOND CIRCUIT UPHOLD SUCH RULING; AND NYAG CANNOT BE ALLOWED TO INTERFERE. 14

IV. PIERSON V. RAY IS INAPPLICABLE. DEFENDANT KNEW AND RELIED UPON THE DISMISSAL, WITH PREJUDICE, OF NYC91440 02 AS AGAINST KENDRA MUSGRAVE AND SUBSEQUENT TO DISMISSAL THERE WAS A CLEAR ABSENCE OF JURISDICTION. 19

V. THERE IS NO JURISDICTION FOR AT WHIM SUA SPONTE ADDITION OF PARTIES OR ALTERATION TO COURT RECORD OR ISSUING A WARRANT AGAINST ANYONE AND EVERYONE AS DEFENDANT KNOWS; SUBSEQUENTLY THERE IS A CLEAR ABSENCE OF JURISDICTION.....21

VI. PIERSON V. RAY IS INAPPLICABLE. JUDICIAL IMMUNITY DOES NOT APPLY TO MINISTERIAL ACTS 22

VII. DEFENDANT IS NOT ENTITLED TO IMMUNITY FOR ACTS TAKEN OUTSIDE OF HER GEOGRAPHICAL JURISDICTION WHICH IS A CLEAR ABSENCE OF ALL JURISDICTION.....23
VIII. DEFENDANT WAS DEPRIVED OF JURISDICTION BY STATUTE OVER NYC91440 02 AND SUBSEQUENTLY THERE IS A CLEAR ABSENCE OF JURISDICTON.....25
IX. COURT FAILED, TO PROTECT DOCUMENTS, EVIDENCE, AND PRIMARY WITNESS TO BE USED FOR TRIAL, WHICH WAS UPHELD BY SECOND CIRCUIT, THUS DENYING PLAINTIFF DUE PROCESS. 29

CONCLUSION.....30

TABLE OF AUTHORITIES

Cases

Crist v. Town Court, 156 F.R.D. 85 (S.D.N.Y. 1994) 5
200-202 West 107th Street LLC v. Braun, Civil Hosing Court New York County, NYLJ May 1, 2002, p. 23 col. 2..... 26
423 S. *Salina Street, Inc. v. City of Syracuse* 503, N.E.2d 63 (NY 1986)..... 5
and citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, n.7 (1979)..... 10
Blonder-Tongue Laboratories, Inc., v. University of Illinois Foundation, 402 U.S. 313, 328-329 (1971)..... 10
Blonder-Tongue Laboratories, Inc., v. University of Illinois Foundation, 402 U.S. 313, 329 (1971)..... 11
Bounds v. Smith, 430 U.S. 817, 825, 94 S.Ct. 2963 1977. 5, 18
Boyd v. Carroll, 624 F.2d 730, 732-733 (5th Cir. 1980) 13, 20
Butz v. Economou, 438 U.S. 478, 506 (1978)..... 5, 20
Canatella v. State of California, 304 F.3d 843 (CA9 2002). 11
Cohen v. Virginia, 6 Wheat. 264, 5 L.Ed. 257 (1821)..... 5

Cozzo v. Tangipahoa Parish Council-President Government, 279 F.3d 273 (5th Cir. 2002) 13
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 7, 8, 13
Douglas v. Collins, 152 Misc. 839, 273 N.Y.S. 663 (Sup Ct, Kings Co, 1934), *aff'd* 243 App Div 546 (2nd Dept 1934), *aff'd* 267 N.Y. 557, 196 N.E. 577 (1935) 5, 23
Ex parte Hull, 312 U.S. 546, 548-49 (1941) 5, 18
Ex parte Young, 209 U.S. 123 (1908) 5
Exxon Mobil Corp., v. Saudi Basic Industries Corp., (03-1696) (U.S. 2005) 7, 8, 9
Forrester v. White, 484 U.S. 219 (1988) 5, 22
Hafer v. Melo, 502 U.S. 21 (1991) 5
Hafer v. Melo, 502 U.S. 21, 30-31 (1991) 11
Hansberry v. Lee, 311 U.S. 32, 41-42 (1940) 10
Hansbury v. Lee, 311 U.S. 32 (1940) 11
Hansbury v. Lee, 311 U.S. 32, 40 (1940) 10
Haring v Prosise, 462 U.S. 306, 313 (1983) 11
Hartford Courant Company v. Pellegrino, 380 F.3d 83 (CA2 2004) 6, 11
Heines v. City of Buffalo 436 NYS 2d 512 NY App 4th Dept., 1981 ..... 5, 12
Heintz, et al. v. Jenkins, 514 U.S. 291 (1995) 26
Henry v. First National Bank of Clarksdale, 595 F.2d 291, 298 n.1 (5th Cir. 1979) 13, 20
Hoya Saxa, Inc. v. Gowan, 149 Misc.2d 191; 571 N.Y.S.2d 179 (App Term 1991) 27
In re Roy Moore, ___ U.S. ___, ___ S. Ct. ___, 2003 WL 21978095 18
Jersey Street Associates LLC v. Quality Cleaning Corporation N.Y.City Civ.Ct., 2002. [Westlaw] 25
Johnson v. DeGandy, 512 U.S. 997 (1994) 9
Kellman v. State of New York, __ N.Y.S. 2d ___, 2005 WL 954643, 2005 N.Y. Slip Op. 25155, NYLJ April 26, 2005, p. 18 col.1 ..... 5, 23
La Pier v. Deyo 100 A.D.2d 710 (3rd Dept 1984) 25

Lopez v. Vanderwater, 620 F.2d 1229 (CA7 1980)..... 23
Lynch v. Household Finance Corp., 405 U.S. 538, 31 L.Ed.2d 424 (1972)..... 5
Maestri v. Jutkofsky, 860 F.2d 50, 52 (CA2 1988), *cert. den.* 489 U.S. 196 (1989)..... 5, 24
Malley v. Briggs, 475 U.S. 335 (1986)..... 5, 21, 22
Martin v. Wilks, 490 U.S. 755, 759 (1989)..... 5, 9
Martin v. Wilks, 490 U.S. 755, 761 (1989)..... 10
Mennella v. Lopez-Torres, 229 AD2d 153, 655 N.Y.S.2d 604 (2nd Dept 1997), aff'd 91 N.Y.2d 474, 672 N.Y.S.2d 834, 695 N.E.2d 703 (1998)..... 5, 22
Moccio v. New York State Office of Court Admin., 95 F. 3d 195 (199-200) (CA2 1996)..... 7
Monroe v. Pape 365 U.S. 167 (1961)..... 12
Monroe v. Pape, 365 U.S. 167, 172 (1961)..... 5
Montana v. United States, 440 U.S. 147, 154-155 (1979).... 10
New York Times Co. v. Sullivan, 376 U.S. 254, 300 (1964). 19
NLRB v. Bildisco & Bildisco, 465 U.S. 513, 529-530, n. 10 (1984)..... 10
Parklane Hosiery Co. v. Shore, 439 U.S. 322, n.7 (1979).... 11
Pierson v. Ray, 386 U.S. 547, 554 (1967)..... 13
Richardson v. Koshiba, 693 F.2d 911 (CA9 1982)..... 20, 23
Robinson v. Ariyoshi, 753 F.2d 1468 (9th Cir 1985)..... 11
Romea v. Heilberger & Assocs., 988 F. Supp. 712 (SDNY 1997), aff'd 63 F.3d 111 (CA2 1998)..... 26
Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)..... 7, 8
Santiago v. City of Philadelphia, 435 F. Supp. 136 (ED Pennsylvania, 1977)..... 22
Soldal v. County of Cook United States 506 US 56 (1992) 5, 6
Stone v. Williams, 766 F.Supp. 158, 162 (S.D.N.Y. 1991), aff'd., 970 F.2d 1043 (1992), *cert.* denied, 124 L.Ed.2d 243 11
Totaram v. Cordero, NYLJ, April 16, 2003, p.22, col.3 27
Tulsa Professional Collection Services, Inc v. Pope, 485 U.S. 478 (1988)..... 10

U.S. Fidelity & Guar. Co. v. United States, 837 F2d 116, 120 (3rd Cir. 1988) 18
United States v. Lee, 106 U.S. 196, 220 (1882) 18
United States v. Will, 449 U.S. 200, 66 L.Ed.2d 392 5
William L. Bonnel Co., v. Katz, 23 Misc. 2d 1028, 1031 196 N.Y.S. 2d 763, 768 (Sup. Ct. 1960) 26
Wong Wing Fai Co., S.A. v. United States, 840 F2d 1462, 1470 n. 18 (9th Cir. 1988) 18
Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969) 10

Statutes

28 U.S.C. § 453 1
42 USC §§ 1983, 1988 1
5 USC §7301 18
Executive Order No. 11222 issued May 8, 1965, 30 F.R. 6469 18
Sarbanes-Oxley Act of 2002, P.L. 107-204, July 30, 2002 .. 29

Other Authorities

1925, Op.Atty.Gen.903 14

Rules

FRAP Rule 31 1
FRCP Rule 12 ..... 1, 17, 20
FRCP Rule 56 1
FRCP Rule 7 ..... 1, 17, 20
FRCP Rule 8(c) 1, 13, 20

Constitutional Provisions

Constitution of the United States of America, 14th Amendment 11, 18
Constitution of the United States of America, 4th, 5th, 7th, and 14th Amendments 1
Constitution of the United States of America, 5th Amendment 11, 18
Constitution of the United States of America 7th Amendmen 14, 25

Constitution of the United States of America, Article I, Section 9 ..... 1, 23
New York State Constitution Article 6 28

New York Civil Practices & Procedure
§§ 301 and 302 26
§1012 16
§3215(b) 28
§3215(f) 28
§3215(g)(4)(i) 28
§4511(a) 21

New York Statute
MDL § 328(3) 27
MDL §§ 301 and 302 27
MDL §328(3) 27
Public Officer's Law §2 14
Public Officers Law §17 14
RPAPL §749 22

New York City Charter 28

OPINIONS BELOW

STATEMENT OF JURISDICTION

Jurisdiction is pursuant to 28 USC §1251(1) and by extension granted by this Court to file Petition on or before May 20, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States of America, 4th, 5th, 7th, and 14th Amendments; Constitution of the United States of America, Article I, Section 9; Article 6, Clause 2; 42 USC §§ 1983, 1988; 28 U.S.C. § 453; FRAP 31; FRCP Rule 56; FRCP Rule 12; FRCP Rule 8(c); FRCP Rule 7; Local Civil Rule 12.1

STATEMENT OF THE CASE

After an illegal seizure of Kendra Musgrave's bank account obtained by altering captions to make Kendra Musgrave a party to a $9,855.18 money judgment issued by a hearing officer ("JHO") in Housing Part of Civil Court, New York City, New York County ("Housing Part") under New York County L&T Index No. 83622/00 "NYC83622/00, which judgment was never served, not even to the bank, and the Housing Part file to which Kendra Musgrave was then denied access to for almost a year; a portion of the alleged judgment creditors then sued Kendra Musgrave, whose address of 9985 Appletree Place, Thornton, Colorado 80260, was court record, in New York County L&T Index No. 91440 02 ("NYC91440 02) as a partner joined in interest to tenant, ("Dr. Margareta Griesz-Brisson & Kendra Musgrave *Respondent Tenant"*).

As is exhibited to Complaint and Amended Complaint, after attorney for alleged creditors declared to Housing Part that he did not know Kendra Musgrave's address and finally "No, she's not a tenant," JHO Shlomo Hagler, dismissed with prejudice NYC91440 02, as against

Kendra Musgrave for lack of jurisdiction, the first day that the matter appeared on the calendar.

No appeal was ever taken from the dismissal of the petition (with prejudice) as against Kendra Musgrave. No motion for reconsideration or renewal was ever made in regard to that order.

Defendant rendered final judgment for subject premises and over $20,448.35 against tenant, Dr. Margareta, Griesz-Brisson, only under NYC91440 02. With contempt then pending in New York City Civil Court, New York County, NYC83622/00, for attorney's willful non-compliance to restore bank account, *inter alia*, to Kendra Musgrave, Defendant then added Kendra Musgrave, and as a partner joined in interest to tenant, on warrant of eviction Defendant issued in NYC91440 02, so such warrant was executable against "Dr. Margareta Griesz-Brisson & Kendra Musgrave tenant," also "John Doe" and "Jane Doe" each, as tenants, making each liable fully to such judgment creditors for judgment property and over $20,445.35.

In New York warrants of eviction are never available to the public.

Plaintiff sued Defendant pursuant to 42 USC §§1983 1988, in her official and personal capacity in the United States District Court for the Southern District of New York on or about August 8, 2003. Plaintiff sought a temporary restraining order pending injunction hearing; an injunction; declaratory judgment, jury trial and the costs and fees thereof from the federal court.

Defendant was personally served according to statute and service was deemed proper.

In complying with clerk's procedural instructions to ensure proper service, Kendra Musgrave called New York City's Corporation Counsel, and the Office of the Attorney General of the State of New York ("NYAG"), expecting NYAG to refuse service. New York City Corporation

Counsel refused service. NYAG requested service "just to be safe."

NYAG was previously contacted when Kendra Musgrave's bank account was seized, no judgment was recorded, served, and otherwise denied access to Housing Part file.

Court granted hearing on injunction scheduled August 23, 2003 ("Hearing") but denied temporary restraining order pending hearing.

At NYAG's request, NYAG was served courtesy copy of Summons and Complaint (03 CV 5994) at approximately 4:00 p.m. August 13, 2003.

At approximately 9:00 a.m. August 14, 2003, possession of subject premises was taken from Dr. Griesz-Brisson, the tenant, locking up tenant's exempt property including, documentary evidence, stored information, as well as court record made record exhibited in the federal court, which was Plaintiff's supporting evidence, to the instant action, and making also unavailable tenant for trial.

Original service papers were filed with the court. The damage being done Plaintiff sought to enjoin, Plaintiff requested at Hearing an injunction at least against the use of plaintiff's name as a partner joined in interest to Dr. Griesz-Brisson or anyone, without authorization, and against taking or withholding of Plaintiff's personal property under Defendant's colour of authority; which Court denied but never reduced to written order.

Assistant Attorney General William B. Jaffe remained present at Hearing, but did not sit at Defendant's table, make a formal appearance on the record, or speak but a few word words. The District Court ruled from the bench New York was "not a necessary party." The District Court also ruled from the bench, denying Plaintiff injunction sought, but did not reduce to written order.

The District Court then granted permission to Mr. Jaffe, who did not participate in the Hearing, to write a letter

to court to influence the court to dismiss Plaintiff's action, exhibited in Plaintiff's Amended Complaint. The court's docket is void of any filings by Defendant, NYAG or Mr. Jaffe.

The District court deemed Plaintiff indigent status;

As is exhibited in Plaintiff's Amended Complaint, Mr. Jaffe wrote the District court a letter on NYAG letterhead dated August 23, 2003, citing "Rooker-Feldman" and "absolute immunity" as court's basis dismissing Plaintiff's action.

After Defendant' time to file an Answer expired, the District court ruled upon Mr. Jaffe's letter, dismissing Plaintiff's action on Rooker-Feldman, and, *Pierson v. Ray*, which order was then mailed to Plaintiff in Colorado.

Plaintiff's motion for summary judgment or in the alternative a default judgment was not docketed and returned by mail Plaintiff in Colorado.

In Order dated September 26, 2003, Court denied the transcript of record made of hearing held August 23, 2003, necessary to appeal. The transcript is therefore missing from the Appendix, filed with this petition.

Without this transcript, Plaintiff then appealed to United States Court of Appeals for the Second Circuit ("Second Circuit"), arguing that District Court's order was void on its face: there was no "motion," of any kind, for court to "grant;" Rooker-Feldman, was inapplicable; Defendant was not immune; Defendant otherwise defaulted; failure to grant injunction contradicted federal statute and violated Plaintiff's rights; and denial of the transcript necessary appeal, especially an oral ruling, denied her due process, *inter alia*.

In Order filed February 2, 2004, Second Circuit ordered appellee's brief filed within thirty days (April 6, 2004) after appellant's brief (March 5, 2004).

NYAG did not appeal District Court's ruling at Hearing, the only hearing, in action, that New York State was "not a necessary party." Without any motions or brief filed

by appellee, Plaintiff, in motion dated April 17, 2004, moved the court to grant her appeal in its entirety. Second Circuit denied motion "moot" because NYAG, without prior motion, filed April 20, 2004 oversize, third-party appellee's brief, which brief contained voluminous argument, never raised or asserted in the District court. Second Circuit then denied Plaintiff's motion to reject NYAG's papers.

Because Second Circuit accepted NYAG's brief on behalf of appellee filed April 20, 2004, Plaintiff's time to file a reply had expired.

Despite, clear rulings of this Court and other Federal and New York State Courts in *Cohen v. Virginia*, 6 Wheat. 264, 5 L.Ed. 257 (1821); *United States v. Will*, 449 U.S. 200, 66 L.Ed.2d 392; *Ex parte Young*, 209 U.S. 123 (1908); *Ex parte Hull*, 312 U.S. 546, 548-49 (1941); *Monroe v. Pape*, 365 U.S. 167, 172 (1961); *Lynch v. Household Finance Corp.*, 405 U.S. 538, 31 L.Ed.2d 424 (1972); *Bounds v. Smith*, 430 U.S. 817, 825, 94 S.Ct. 2963 1977; *Butz v. Economou*, 438 U.S. 478, 506 (1978); *Malley v. Briggs*, 475 U.S. 335 (1986); *Forrester v. White*, 484 U.S. 219 (1988); *Martin v. Wilks*, 490 U.S. 755, 759 (1989); *Hafer v. Melo*, 502 U.S. 21 (1991); *Soldal v. County of Cook United States* 506 US 56 (1992); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *Crist v. Town Court*, 156 F.R.D. 85 (S.D.N.Y. 1994); *Douglas v. Collins*, 152 Misc. 839, 273 N.Y.S. 663 (Sup Ct, Kings Co, 1934), *aff'd* 243 App Div 546 (2nd Dept 1934), *aff'd* 267 N.Y. 557, 196 N.E. 577 (1935); *Mennella v. Lopez-Torres*, 229 AD2d 153, 655 N.Y.S.2d 604 (2nd Dept 1997), aff'd 91 N.Y.2d 474, 672 N.Y.S.2d 834, 695 N.E.2d 703 (1998); and even most recently *Kellman v. State of New York*, __ N.Y.S. 2d ___, 2005 WL 954643, 2005 N.Y. Slip Op. 25155, NYLJ April 26, 2005, p. 18 col.1; as well as *Heines v. City of Buffalo* 436 NYS 2d 512 NY App 4th Dept., 1981; *423 S. Salina Street, Inc. v. City of Syracuse*, 503 N.E.2d 63 (NY 1986); *Maestri v. Jutkofsky*, 860 F.2d 50, 52 (CA2 1988), *cert. den.* 489 U.S. 196 (1989); and *Hartford Courant*

Company v. Pellegrino, 380 F.3d 83 (CA2 2004); *inter alia*, the Second Circuit then denied Kendra Musgrave's appeal on the abstention doctrine of Rooker-Feldman.

Obviously, the question for this Court is just how far does Rooker-Feldman doctrine extend?

REASONS FOR GRANTING THE WRIT

Rather than complex issues of law that requires determination by the minds of our country's highest court, what is at stake in the instant action is fundamental and to all U.S. law, thus affecting everyone in these United States, the Constitution and all rights secured thereunder, which this Supreme Court of these United States has the duty to protect.

There is no reason why a case such as this should have to come to the Supreme Court of these United States. That it does is, is precisely why certiorari should be granted: there is no other court to repair to for justice.

The courts below so contradicted federal statute, state statute, its own rulings, this Court's rulings, supplanting the supremacy of the constitution, this Court and Congress, that this Court needs to address it for all of the federal courts.

Circuit court condoned debt collection practices impact everyone in the nation.

The lower courts condoned procedural practice, impacts everyone in the nation.

Court's decisions are contradictory in and of itself: Abstention under Rooker-Feldman is a non-waivable jurisdictional defect, and judicial immunity is an affirmative defense;

The act of taking of personal property without due process of law or in compliance with statute has already been condemned as an illegal search and seizure in violation of the Fourth Amendment in *Soldal v. County of Cook United States* 506 US 56 (1992).

I. THE ROOKER-FELDMAN DOCTRINE DOES NOT APPLY TO THIS CASE.

The Second Circuit upheld the judgment of the District Court, on *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) under *Moccio v. New York State Office of Court Admin.*, 95 F. 3d 195 (199-200) (CA2 1996) as support for dismissal of Plaintiff's civil rights action; which, is the very Second Circuit case which the United States Supreme Court exemplified as improper extension of the Rooker-Feldman doctrine so as to override Congress's conferral of jurisdiction upon the federal courts concurrently. *Exxon Mobil Corp., v. Saudi Basic Industries Corp.*, (03-1696) (U.S. 2005).

In the landmark case of *Exxon Mobil Corp., v. Saudi Basic Industries Corp.,* the United States Supreme Court revisited the subject of the Rooker-Feldman abstention doctrine and held

> "...the doctrine has sometimes been construed to extend far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superceding the ordinary application of preclusion law pursuant to 28 U.S.C. section 1738. See, e.g. Moccio v. New York State Office of Court Admin., 95 F. 3d 195 (199-200) (CA2 1996)." Exxon Mobil Corp., v. Saudi Basic Industries Corp., (03-1696) (U.S. 2005).

After upholding the dismissal on Rooker-Feldman grounds, the Second Circuit found, "In addition, as the district court observed....", upon which a discussion of judicial immunity followed. It is dicta in the most classic sense. Each court, the Southern District and United States Court of Appeals for the Second Circuit upheld dismissal pursuant to the Rooker-Feldman abstention doctrine. *Rooker v. Fidelity*

Trust Co., 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The United States Supreme Court clarified the correct limitation of the Rooker-Feldman-Exxon doctrine:

> "The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Exxon Mobil Corp., v. Saudi Basic Industries Corp.*, (03-1696) (U.S. 2005).

Thus defined by the highest legal authority in the United States of America, the Rooker-Feldman abstention doctrine does not apply to the case on certiorari. Plaintiff was not a 'state-court loser'. She was not even a 'state-court' party. For lack of jurisdiction, the proceeding NYC91440 02 in Housing Part was dismissed with prejudice, as against her, on the very first day that the matter appeared on the calendar of that Court.

A stranger whom the court rules it has no jurisdiction over, who subsequently receives a dismissal of that proceeding with prejudice, cannot be described as a 'loser'. Self-evidently, Plaintiff had prevailed Housing Part by obtaining the dismissal with prejudice. The action complained of are ministerial acts which robbed her of that victory and further posed gross violations to her civil rights.

The Plaintiff in this federal litigation has, like Exxon-Mobil, "...plainly has not repaired to federal court to undo the Delaware judgment in its favor...". *Exxon Mobil Corp., v. Saudi Basic Industries Corp.*, (03-1696) (U.S. 2005). In this

case it is a New York decision which favored the federal Plaintiff rather than a Delaware judgment, but the principle is clearly the same.

Plaintiff was not inviting the court to review or reject the fact that the Housing Part proceeding was dismissed with prejudice as against her.

Rather, the case on certiorari is on point with Exxon, in that an independent federal claim is being pursued by a party which had also prevailed in state-court litigation. *Exxon Mobil Corp., v. Saudi Basic Industries Corp.*, (03-1696) (U.S. 2005).

It has long been held that Rooker-Feldman does not bar a federal suit by one who was not a party to the state-court proceedings. *Johnson v. DeGandy*, 512 U.S. 997 (1994). Clearly, since the underlying action was dismissed against her with prejudice, Plaintiff cannot possibly be mistaken for a party to the state-court proceedings at the time of all of the actions complained of. Thus *Johnson v. DeGandy* is applicable and Rooker-Feldman is not.

In *Martin v. Wilks* the United States Supreme Court upheld: "...the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party." *Martin v. Wilks*, 490 U.S. 755, 759 (1989). In that case Chief Justice Rehnquist quoted Justice Brandeis:

> "The law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger....Unless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights." *Martin v. Wilks*, 490 U.S. 755, 763 (1989), quoting *Chase National Bank v. Norwalk*, 291 U.S. 431 (1934).

"...[I]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a

party or to which he has not been made a party by service of process." *Martin v. Wilks*, 490 U.S. 755, (1989), quoting *Hansbury v. Lee*, 311 U.S. 32, 40 (1940) and citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, n.7 (1979); *Blonder-Tongue Laboratories, Inc., v. University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969). Certainly the same can be said of one ruled a stranger by having the proceeding against them dismissed with prejudice on the first day the case appears on the calendar.

The two exceptions recognized in *Martin v. Wilks* do not apply. *Martin v. Wilks*, 490 U.S. 755, 761 (1989). In that case the exceptions were spelled out as follows:

"We have recognized an exception to the general rule when, in certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party. See *Hansberry v. Lee*, 311 U.S. 32, 41-42 (1940)("class" or "representative" suits); FRCP Rule 23 (same); *Montana v. United States*, 440 U.S. 147, 154-155 (1979) (control of litigation on behalf of one of the parties in the litigation). Additionally, were a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants, as for example in bankruptcy or probate, legal proceedings may terminate pre-existing rights if the scheme is otherwise consistent with due process. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 529-530, n. 10 (1984)("[P]roof of claim must be presented to the Bankruptcy Court...or be lost"); *Tulsa Professional Collection Services, Inc v. Pope*, 485 U.S. 478 (1988) (nonclaim statute terminating unsubmitted claims against the estate)." *Martin v. Wilks*, 490 U.S. 755, 761 (1989).

The Court in *Parklane Hosiery* makes clear that the reason for this holding is based upon Constitutional grounds. "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co.*

v. Shore, 439 U.S. 322, n.7 (1979) citing *Blonder-Tongue Laboratories, Inc., v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971) and *Hansbury v. Lee*, 311 U.S. 32 (1940). See also, Constitution of the United States of America, 5th Amendment *and* Constitution of the United States of America, 14th Amendment.

The Court of Appeals for the Second Circuit has also recognized that the Rooker-Feldman abstention doctrine does not bar suit by parties who were not a party to the state-court proceedings. *Hartford Courant Company v. Pellegrino*, 380 F.3d 83 (CA2 2004). The same case also held that Rooker-Feldman does not apply to administrative acts. *Hartford Courant Company v. Pellegrino*, 380 F.3d 83 (CA2 2004).

The party who is essentially sent home and released from the case must be allowed to rest upon that determination. It would be absurd to suggest that due process can be rendered by dismissing with prejudice against a person whom the court ruled it had no jurisdiction over, only to then affect their rights during the execution phase of final judgment in that case.

In Hafer v. Melo, 502 U.S. 21, 30-31 (1991), the Court stated: "But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case", quoted also in *Haring v Prosise*, 462 U.S. 306, 313 (1983). *See*, also *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir 1985), vacated on other grounds, 91 L.Ed.2d 56, cited with approval by *Stone v. Williams*, 766 F.Supp. 158, 162 (S.D.N.Y. 1991), aff'd., 970 F.2d 1043 (1992), *cert.* denied, 124 L.Ed.2d 243:

Moreover, the warrant of eviction had already been fully executed. A Ninth Circuit case on point demonstrates how the Rooker-Feldman abstention doctrine can be mooted by later events. *Canatella v. State of California*, 304 F.3d 843 (CA9 2002).

Although Plaintiff has no legal standing to appeal an administrative proceeding she was ruled a stranger to, which is the legally established fact and can be taken judicial notice of in the court's own file, Second Circuit yet terminated her action under the Rooker Feldman doctrine that she should file for remedy, of some kind, in "state court." The Second Circuit thus improperly used the Rooker-Feldman doctrine to supplant by *Monroe v. Pape* 365 U.S. 167 (1961):

> "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. Hence the fact that Illinois by its Constitution and laws outlaws unreasonable searches and seizures is no barrier to present suit in the federal court." Id. at.482.

quoted in *Heines v. City of Buffalo* 436 NYS 2d 512 NY App 4th Dept., 1981; *423 S. Salina Street, Inc. v. City of Syracuse* 68 N.Y.2d 474, 510 N.Y.S.2d 507, 503 N.E.2d 63 (1986).

For all of the reasons cited above, and most certainly due to the fact Plaintiff, was ruled a stranger to the state-court proceedings and that this case is in no way reconcilable with the landmark holding of *Exxon-Mobil v. Saudi Basic Industries* the Rooker-Feldman abstention doctrine does not apply to this case. Plaintiff was not suing because "default judgment was entered against her," Plaintiff sued because no judgment was entered against her, but was specifically enforced against her, and as a partner joined in interest to judgment debtor.

II. COURTS CANNOT DENY JURISDICTION ON ROOKER FELDMAN AND ISSUE FINDINGS OF FACT OR CONCLUSIONS OF LAW.

United States District Court for the Southern District of New York, the Honorable Gerard E. Lynch dismissed this federal civil rights lawsuit holding that "Judge Hoyos has moved to dismiss the complaint under the Rooker Feldman doctrine and on the basis of a judge's absolute immunity from

suit. The motion will be granted. [Since] "the acts complained of here were clearly 'within [the] judicial jurisdiction' granted to Judge Hoyos. Therefore she is immune on account of them. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). ...[W]hat Ms. Musgrave seeks, essentially, is review of Judge Hoyos's decision to enter a judgment against her. However, "a United States District Court has no authority to review final judgments of a state court judicial proceedings. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)."

That District Court dismissed Plaintiff's civil rights action for lack of jurisdiction under the Rooker-Feldman doctrine, the District Court by its own order, had no jurisdiction to make any finding of fact, i.e., "the acts complained of here were clearly 'within [the] judicial jurisdiction' granted to Judge Hoyos;" and "what Ms. Musgrave seeks, essentially, is review of Judge Hoyos's decision to enter a judgment against her;" or, to then make any conclusion of law: "Therefore she is immune on account of them. *Pierson v. Ray*, 386 U.S. 547, 554 (1967)."

Abstention under Rooker-Feldman is a non-waivable jurisdictional defect. Judicial immunity is an affirmative defense. The court could not deny jurisdiction under the abstention doctrine of Rooker-Feldman, then also rule upon an affirmative defense. A contradictory order is void on its face. An affirmative defense is waived if not pleaded (FRCP Rule 8(c)); *Cozzo v. Tangipahoa Parish Council-President Government*, 279 F.3d 273 (5th Cir. 2002). "Absolute immunity is an affirmative defense that is waived if it is not pleaded." *Boyd v. Carroll*, 624 F.2d 730, 732-733 (5th Cir. 1980). "Failure to plead judicial immunity waived the affirmative defense." *Henry v. First National Bank of Clarksdale*, 595 F.2d 291, 298 n.1 (5th Cir. 1979).

Defendant was personally and properly served according to statute. Defendant did not assert any defense.

The time to answer had expired before any decision was rendered in the District Court.

There was no defensive argument the Second Circuit could hear. That it did, was entirely at the expense of Plaintiff's rights. Neither, can the Second Circuit cannot uphold a decision rendered in response to a letter, or otherwise, entertain third parties, certainly any third party, the District Court previously ruled was "not a necessary party," when they happen to show up and declare a lack of jurisdiction under Rooker-Feldman; but then go on to render findings of fact on about judicial immunity. It is contradictory.

III. COURTS CANNOT RULE UPON A THIRD PARTY LETTER, NOR SECOND CIRCUIT UPHOLD SUCH RULING; AND NYAG CANNOT BE ALLOWED TO INTERFERE.

The Defendant is a hearing officer to the Housing Part which was created by New York City Civil Court Act §110 ("NYCCA"), which restricts Defendant's subject matter jurisdiction thereto.

Defendant is not an elected judge, and cannot rule over any claims of equity over $20 as set forth by the Constitution of the United States, 7th Amendment.

Officers and employees of county courts are county and not state officers. 1925, Op.Atty.Gen.903.

New York State's Public Officer's Law §2 states "The office of a state officer is a state office. The office of a local officer is a local office."

New York State's Public Officers Law §17 sets forth a very comprehensive list of those State employees whom the New York State Attorney General can defend in court. The term "employee" is specifically defined and includes, *inter alia*, employees of the Central Pine Barrens Joint Planning and Policy Commission; the Dormitory Authority; soil and water conservation districts; the Roswell Park Cancer Institute

corporation; the tourism council; the Niagara River Greenway Commission; the Governor Nelson A Rockefeller Empire State Plaza Performing Arts Center Corporation; and various and sundry others. It does not list Defendants (or even judges) of the Civil Court of the City of New York on its exhaustive list. In fact no New York City employees are listed therein because New York City has its own Corporation Counsel to represent New York City employees. The website for the New York State Attorney General's Office boasts that they have 500 attorneys. The website for the New York City Corporation Counsel's Office claims they have 650 attorneys. It is a wholly separate entity from the State Attorney General's Office. Corporation Counsel has adamantly refused to represent the Defendant in this civil rights action, as raised to the Second Circuit.

The terms of employment for a state attorney is that such attorney can represent only State of New York. There is a conflict of interests NYAG paid by the taxpayers of New York, to represent any but the State of New York.

There is a conflict of interest between NYAG's representation of this Defendant and its duty to defend the State of New York with its duty to protect civil rights and investigate criminal complaints, specifically, those previously made by Plaintiff of the illegal seizure of her bank account.

There further exists a conflict of interests between NYAG's representation of this Defendant and New York Attorney General's received campaign funds from NYC91440 02's alleged judgment creditors, as is public record and raised to Second Circuit.

Further, the constitutionality of state legislation was not at issue or made of issue as set forth in Amended Complaint and is further evidenced in court's decision dismissing action. District Court's Order is void of any reference to state statute or even NYAG, as is the docket to such proceeding.

As well, the record is void of any papers filed for NYAG to join this action.

Further, if and when a state statute is in question, and NYAG properly joins an action, under New York's Civil Procedure Law & Rules ("CPLR") §1012 NYAG can only represent New York to support the constitutionality of legislation of a state statute. NYAG cannot represent the constitutionality of state statute and this Defendant, and not in this action.

Since the Corporation Counsel has refused to represent the Defendant, Defendant is required retain her own counsel, or proceed pro-se such as Plaintiff. It is a further violation of Plaintiff's civil rights to have to be opposed by the State Attorney General's Office at the appellate level, when it has no authority for any involvement in this litigation. NYAG is sworn to uphold civil rights, an obligation it cannot fulfill by denying persons civil rights or representing others who do so, or get around that fact by writing a federal judge to get a ruling.

At Hearing Mr. Jaffe did not make a formal appearance on the record. The few words he spoke may or may not have been heard by the court reporter. Mr. Jaffe's was presence recognized by the Court and Plaintiff by the record. Mr. Jaffe or NYAG never filed a notice of appearance for Defendant. No papers of any kind were ever filed, as the docket plainly shows, by or for Defendant in any capacity.

At Hearing District Court ruled that New York State is "not a necessary party," to Plaintiff's action. No appeal was filed on such ruling.

At Hearing, District Court invited Mr. Jaffe to write the court a "letter," which letter is exhibited to Plaintiff's Amended Complaint.

In response to Mr. Jaffe's letter, Plaintiff wrote:

> "Actually, I do not recall your Honor Gerald E. Lynch, granting permission to Assistant Attorney General, William Jaffee, [sic] to write a letter

(attached) to the court as a motion for summary judgment to dismiss §1983 action 03 CV 5994, I, the *pro se* plaintiff, filed. Nor, do I recall when Rule 56 of the Federal Rules of Civil Procedure were suspended for such purpose. The only purpose for which is further denial of due process, the course of action taken precipitating the instant action. So disposing of my action ***mano a mano***, and more especially when Mr. Jaffee [sic] has not so much as filed a paper in this action, is highly inappropriate."

After Defendant's time had expired under statute to file an Answer, the court dismissed this federal civil rights lawsuit holding that "Judge Hoyos has moved to dismiss the complaint under the Rooker Feldman doctrine and on the basis of a judge's absolute immunity from suit. The motion will be granted."

The Order is void on its face.

There was no motion to "grant." The court's docket is void of any papers filed for or on behalf of and none, not even an Answer was ever served on Plaintiff or filed by Defendant in any capacity.

Mr. Jaffe's letter, even as it appears, on NYAG letterhead is not a proper Answer or motion under the Federal Rules of Civil Procedure, FRCP Rule 7. FRCP Rule 12. FCRP Rule 56 as well as Local Civil Rule 12.1, which, as of February 26, 2003 requires "[a] represented party moving to dismiss or for judgment on the pleadings against a party proceeding pro se…shall serve and file the notice required by Local Civil Rule 56.2 at the time the motion is served." No such notice was ever served because there was no such motion. Any motion.

The Supreme Court has instructed us time and again that, "courts must presume that a legislature says in a statute what it means and means in a statue what it says there." Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992)

Plaintiff's action was dismissed in response to a letter from NYAG Attorney General's Office, which fact was flatly ignored by the Second Circuit Court. Constitution of the United States of America, 5th Amendment. Constitution of the United States of America, 14th Amendment.

Imposing onerous conditions denies access to the court (e.g., Ex parte Hull, 312 U.S. 546, 548-49 (1941) (state and its officers may not abridge or impair a petitioner's rights); meaningful access to the courts is due process right to "a reasonably adequate opportunity to present claimed violations of fundamental rights to the courts." Bounds v. Smith, 430 U.S. 817, 825, 94 S.Ct. 2963 1977; Violation of due process is not discretionary. *Wong Wing Fai Co., S.A. v. United States*, 840 F2d 1462, 1470 n. 18 (9th Cir. 1988).

No court has discretion to violate constitution, statue or applicable regulation. *U.S. Fidelity & Guar. Co. v. United States*, 837 F2d 116, 120 (3rd Cir. 1988); *In re Roy Moore*, ___ U.S. ___, ___ S. Ct. ___, 2003 WL 21978095, quoting, *United States v. Lee*, 106 U.S. 196, 220 (1882).

> "Article VI of the Constitution of the United States provides that Constitution 'is the Supreme Law of the Land ... and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' The justices of this Court are bound by solemn oath to follow the law, whether they agree or disagree with it, because 'All of the officers of the government, from the highest to the lowest are creatures of the law, and are bound to obey it.' (Aug. 20, 2003)

"Any person in government should: Uphold the Constitution, laws and regulations of the United States and of all governments therein and never be a party to their evasion." 5 USC §7301, Executive Order No. 11222 issued May 8, 1965, 30 F.R. 6469.

Confident in their belief that the Federal Rules of Appellate Procedure and Second Circuit Scheduling Orders

are as inapplicable to them as New York Public Officer's Law and the Federal Rules of Civil Procedure were below, without any prior motion, NYAG, without prior motion, then filed two weeks after the expiration for filing appellee's brief, an oversize brief to advance various arguments not made below. The docket shows no arguments or representations below. There was therefore no argument that the court could hear on behalf of Defendant, who was personally and properly served. Yet, the Second Circuit accepted such filing, made the day Plaintiff's reply was due. Therefore, Plaintiff was denied even the opportunity. Plaintiff could only move the Second Circuit to reject NYAG's papers, which Second Circuit also denied.

Second Circuit then upheld District Court on Rooker-Feldman. Yet, Second Circuit's failure to obtain jurisdiction under Rooker-Feldman, somehow did not take away its jurisdiction to make findings of fact, conclusions of law and issue dicta about judicial immunity as with the Southern District Court below. Nor did the Second Circuit address the issue that it was upholding a letter – a letter from NYAG, a third party, influencing a judge's decision in a federal action. In so doing the courts distinguished a superior class which is repugnant to the constitution.

> "The American Colonists were not willing, nor should we be, to take the risk that '(m)en who injure and oppress the people under their administration (and) provoke them to cry out and complain' will also be empowered to 'make that very complaint the foundation for new oppressions and prosecutions.' The Trial of John Peter Zenger, 17 Howell's St. Tr. 675, 721-722 (1735) (argument of counsel to the jury)" *New York Times Co. v. Sullivan*, 376 U.S. 254, 300 (1964).

IV. PIERSON V. RAY IS INAPPLICABLE. DEFENDANT KNEW AND RELIED UPON THE DISMISSAL, WITH PREJUDICE, OF NYC91440

02 AS AGAINST KENDRA MUSGRAVE AND SUBSEQUENT TO DISMISSAL THERE WAS A CLEAR ABSENCE OF JURISDICTION.

Preliminarily, it must be noted that the one who is claiming immunity has the burden of legally establishing that immunity. Butz v. Economou, 438 U.S. 478, 506 (1978):

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.") (quoting United States v. Lee, 106 U.S. 196, 220, 27 L. Ed. 171, 1 S. Ct. 240 (1882)). Only when the person claiming absolute immunity can prove that such immunity is justified will we impose it".

See also Richardson v. Koshiba, 693 F.2d 911 (CA9 1982).

Immunity is an affirmative defense which is waived if not properly raised by an answer or a motion to dismiss. FRCP Rule 12; FRCP Rule 8(c); *Boyd v. Carroll*, 624 F.2d 730, 732-733 (5th Cir. 1980); *Henry v. First National Bank of Clarksdale*, 595 F.2d 291, 298 n.1 (5th Cir. 1979). No answer was ever filed in this case. The letter from the NYAG, a non-party to this federal civil rights action, was not a 'motion to dismiss' cognizable by the FRCP Rule 7.

Defendant is not an appellate judge. Defendant is not a judge. Defendant does not have jurisdiction to overturn the rulings of another hearing officer assigned to the Housing Part, and specifically JHO Hagler's who had previously dismissed with prejudice NYC91440 02 as against Kendra Musgrave for lack of jurisdiction.

Housing Part decisively ruled it did not have jurisdiction over Kendra Musgrave and dismissed the proceeding with prejudice as against Kendra Musgrave. Defendant JHO Hoyos cannot un-rule it to obtain jurisdiction over Kendra Musgrave, and most certainly not after the proceeding was over.

No appeal or reconsideration was brought by anyone seeking to reverse the dismissal of the case as against Kendra Musgrave. The record exhibited to Plaintiff's Amended Complaint is clear Defendant well knew of such ruling and relied on such ruling of JHO Hagler, prior to issuing a warrant of eviction against "Dr. Margareta Griesz-Brisson & Kendra Musgrave tenant."

The petitioner-landlord had previously stated to Housing Part that Kendra Musgrave was "not a tenant." Kendra Musgrave is not on the lease as is Housing Part's record. Kendra Musgrave is not on *any* lease as is Housing Part record. There is no record of any legal partnership Kendra Musgrave formed with Dr. Margareta Griesz-Brisson to create "Dr. Margareta Griesz-Brisson & Kendra Musgrave," nor does Defendant have any authority to so create one on behalf of either Dr. Margareta Griesz-Brisson or Kendra Musgrave.

CPLR §4511(a) requires judicial notice of all common law, statutes, and constitutions without request.

The non-payment case was dismissed with prejudice specifically as against Kendra Musgrave for lack of jurisdiction.

This is as clear as clear absence of jurisdiction gets. Jurisdiction was clearly absent as a matter of law.

Defendant's clear lack of jurisdiction over Kendra Musgrave is incontrovertible as Defendant well knew. It was a matter of law, and a very straightforward and uncomplicated matter of law. The law does not protect "the plainly incompetent [and] those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335 (1986).

V. THERE IS NO JURISDICTION FOR AT WHIM SUA SPONTE ADDITION OF PARTIES OR ALTERATION TO COURT RECORD OR ISSUING A WARRANT AGAINST ANYONE AND EVERYONE AS DEFENDANT KNOWS; THERE IS A CLEAR ABSENCE OF

JURISDICTION.

The law does not protect "the plainly incompetent [and] those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335 (1986).

VI. PIERSON V. RAY IS INAPPLICABLE. JUDICIAL IMMUNITY DOES NOT APPLY TO MINISTERIAL ACTS

Defendant's actions complained of are ministerial acts. The New York State Court of Appeals, the highest legal authority in the State of New York, held that the issuance of a warrant of eviction was ministerial act. *Mennella v. Lopez-Torres*, 229 AD2d 153, 655 N.Y.S.2d 604 (2nd Dept 1997), aff'd 91 N.Y.2d 474, 672 N.Y.S.2d 834, 695 N.E.2d 703 (1998). Thus, when the New York State Appellate Division recognizes the issuance of a warrant of eviction as a purely ministerial act and when the highest legal authority of that state, the New York State Court of Appeals upholds that decision, we have an authoritative statement from the highest legal authority in New York pertaining to New York jurisprudence. That should be afforded great deference.

During the execution phase of a non-payment summary proceeding in Housing Part, the warrant of eviction is the paper which allows the marshal to physically evict persons from real property. It is a creature of statute; the New York State Real Property Actions and Proceedings Law (RPAPL) and RPAPL §749 in particular. These warrants are never in a Housing Part file and are not available for public review. To quote Plaintiff's Amended Complaint quoting a New York City Housing Court Clerk, "That's between them and the judge."

Many administrative acts have been found to be outside the pale of judicial immunity. Forrester v. White, 484 U.S. 219 (1988) (employment decisions); *Santiago v. City of Philadelphia*, 435 F. Supp. 136 (ED Pennsylvania, 1977) (administration of juvenile detention facility); *Richardson v.*

Koshiba, 693 F.2d 911 (CA9 1982)(Hawaii state judicial selection commission denied immunity);

In *Lopez v. Vanderwater* a judge was held to be immune from civil suit for his acts which were judicial in nature, but was not immune from suit for acts which were non-judicial in nature. *Lopez v. Vanderwater*, 620 F.2d 1229 (CA7 1980). When a judge's actions are not judicial acts, immunity will be denied.

New York State courts have also applied this rule denying immunity in relation to non-judicial acts taken by judges. That a judge's alleged defamatory remarks were a judicial act raised a question of fact for the jury. Douglas v. Collins, 152 Misc. 839, 273 N.Y.S. 663 (Sup Ct, Kings Co, 1934), aff'd 243 App Div 546 (2nd Dept 1934), aff'd 267 N.Y. 557, 196 N.E. 577 (1935).

In Kellman v. State of New York, __ N.Y.S. 2d ___, 2005 WL 954643, 2005 N.Y. Slip Op. 25155, NYLJ April 26, 2005, p. 18 col.1. Justice Lack of New York Court of Claims, held New York Supreme Court Justice F. Dana Winslow liable for acts which occurred after the judicial phase of that proceeding, for what the court deemed a ministerial act.. Justice Lack wrote, "the judicial nature of the act was completed when Justice Winslow signed the order of attachment."

Judicial acts are protected rather than judicial actors because the United States Constitution forbids the granting of titles of nobility. Constitution of the United States of America, Article I, Section 9. If it were the person of the actor rather than the act which was protected then this immunity would be a personal privilege unacceptably and unconstitutionally akin to privileges granted to nobility under monarchical systems of governance.

VII. DEFENDANT IS NOT ENTITLED TO IMMUNITY FOR ACTS TAKEN OUTSIDE OF HER GEOGRAPHICAL JURISDICTION

WHICH IS A CLEAR ABSENCE OF ALL JURISDICTION.

Defendant's territorial jurisdiction is Manhattan, only. As exhibited to Amended Complaint, in rendering her final judgment in NYC91440 02 against tenant only, Defendant took judicial notice of pending NYC83622/00 in Civil Court stopping the proceeding to examine contents thereof. Wherein motion for contempt filed in NYC83622/00 exhibits her address at 9985 Appletree Place, Thornton, Colorado. Colorado is time zones away from the territorial jurisdiction of Defendant. Her territorial jurisdiction does not extend beyond Manhattan. Colorado is not part of Manhattan.

As was raised to Second Circuit, acting beyond the reach of one's territorial jurisdiction was the very reason for which judicial immunity was denied a New York State town justice in *Maestri v. Jutkofsky*, 860 F.2d 50, 52 (CA2 1988), *cert. den.* 489 U.S. 196 (1989). Wherein Second Circuit set forth a test, including knowledge and intent, and as compared to knowledge and intent of the status quo, for a civil action, for determining a judge's immunity – that no reasonable judge would have thought jurisdiction proper – and– that the judge whose actions are questioned actually knew or must have known of the jurisdictional defect – as where a judge "knowingly acts outside his territorial jurisdiction." *Maestri v. Jutkofsky*, 860 F.2d 50, 52 (CA2 1988), *cert. den.* 489 U.S. 196 (1989).

At least Town Justice Jutkofsky had to look at a map to determine the clear absence of his jurisdiction. He was denied immunity because he knew, or must have known, that his township was not adjacent to a township some two miles distant. *Maestri v. Jutkofsky*, 860 F.2d 50, 52 (CA2 1988), *cert. den.* 489 U.S. 196 (1989). All Defendant had to consult was the contents of her own files, if she had forgotten her statements and conduct on the record. She did not even need a map.

In this case Defendant was acting in the clear absence of jurisdiction. No reasonable judge could have thought it proper to exercise such jurisdiction.

In the case of *La Pier v. Deyo* 100 A.D.2d 710 (3rd Dept 1984) another New York State town justice was held by New York State's Appellate Division to have acted in a clear absence of jurisdiction when he presided over a case in which his own brother was the plaintiff. *La Pier v. Deyo* 100 A.D.2d 710 (3rd Dept 1984). That case at least required reference to the New York State Judiciary Law which prohibits judges from hearing cases involving their relatives. *La Pier v. Deyo* 100 A.D.2d 710 (3rd Dept 1984). Defendant' clear lack of jurisdiction could be determined from her own statements, judgments, rendered against Dr. Griesz-Brisson only, and the official record without any need for further research.

CPLR 4511(a) requires judicial notice without request of other jurisdictions.

VIII. DEFENDANT WAS DEPRIVED OF JURISDICTION BY STATUTE OVER NYC91440 02 AND SUBSEQUENTLY THERE IS A CLEAR ABSENCE OF JURISDICTON.

By statute, Defendant's subject matter jurisdiction is limited to certain residential landlord and tenant disputes. She is not a full judge under New York law and may not grant certain forms of equitable relief in accordance with the Constitution of the United States of America, 7th Amendment. Prime tenant, and only tenant, Dr. Margareta Griesz-Brisson asserted counterclaims in her answer.

Exhibited as record to Amended Complaint, petitioners to NYC91440 02 held no privity of contract with tenant. *Jersey Street Associates LLC v. Quality Cleaning Corporation*, N.Y.City Civ.Ct., 2002. [Westlaw]

Tenant's lease was signed by an agency that does not and has not existed under New York law .

New York's CPLR §§ 301 and 302, an entity may not affirmatively use New York Courts until it obtains authority to do business in New York *William L. Bonnel Co., v. Katz*, 23 Misc. 2d 1028, 1031 196 N.Y.S. 2d 763, 768 (Sup. Ct. 1960).

Dr. Griesz-Brisson, tenant, has never been sued for occasions arising out of her lease, by Darrington Realty. When each New York County L&T Index No. 83622/00 and New York County L&T Index No. 91440 02 were filed, the owner of the building housing subject premises, was listed in New York City records was listed as Darrington Realty, also exhibited to Kendra Musgrave's Complaint and Amended Complaint

There was no chain of title. *200-202 West 107th Street LLC v. Braun*, Civil Housing Court New York County, NYLJ May 1, 2002, p. 23 col. 2.

The attorney, repetitiously suing on behalf of his client's various companies and corporations for alleged debts, and specifically New York County L&T Index No. 83622/00 and New York County L&T Index No. 91440 02, does not and never has had a license to collect debt as is required by NYC Code §20-490. *Heintz, et al. v. Jenkins*, 514 U.S. 291 (1995), held that an attorney engaged in consumer debt collection litigation is a debt collector. Second Circuit held that an attorney seeking collection of rent is a debt collector. *Romea v. Heilberger & Assocs.*, 988 F. Supp. 712 (SDNY 1997), aff'd 63 F.3d 111 (CA2 1998);

The very limited subject matter jurisdiction Defendant held under New York City Civil Court Act to enforce housing code, was then voided by state statute in NYC91440 02.

The subject premises was not covered by a valid certificate of occupancy and has not been since 1989 as was court record in NYC91440 02, and almost entirely the record made before Defendant, and exhibited as record in Amended Complaint. When a subject premises is not covered by a valid certificate of occupancy, New York's Multiple Dwelling Law

("MDL") §§ 301 and 302 requires "no action or special proceeding shall be maintained therefore, or for possession of said premises for nonpayment of said rent."

Rather than evict, Defendant was required by MDL §§ 301 and 302, required Defendant to stop any eviction under New York County L&T 91440 02. *Totaram v. Cordero*, NYLJ, April 16, 2003, p.22, col.3,

Defendant knew subject premises did not have a valid certificate of occupancy both because the issue was raised before her and because violations issued by New York City agencies were in the official database available to her through the computer in her courtroom.

Pursuant to MDL § 328(3):

> "...computerized violation files of the department responsible for maintaining such files and all other computerized data as shall be relevant to the enforcement of state and local laws for the establishment and maintenance of housing standards..." "...shall be prima facie evidence of any matter stated therein and the courts shall take judicial notice thereof as if the same were certified as true under the seal and signature of the commissioner of that department."

Thus the Court below was required ("shall", not may) take judicial notice of the computerized violation files that were available to it. Exclusion of a printout of such records was held an abuse of judicial discretion. *Hoya Saxa, Inc. v. Gowan*, 149 Misc.2d 191; 571 N.Y.S.2d 179 (App Term 1991).

The clear absence of jurisdiction due to the lack of a certificate of occupancy was known to JHO Hoyos and further could easily be verified by checking her computer, which she was required to do pursuant to MDL §328(3).

All such facts as set forth for above, were known to Defendant, brought to he attention with certified copies, in motion Defendant took judicial notice of, and made exhibit to

her written, final judgment rendered against tenant only for premises and $20,448.35 on July 10, 2003, as exhibited to Amended Complaint, for tenant's failure to deposit $20,445.35 with the court to vacate default judgment rendered against tenant on May 16, 2003, as set forth Defendant't written decision dated June 12, 2003, and exhibited to Amended Complaint.

There is no statute in the state of New York which make deposit of funds, in any amount, a condition to vacature of a default judgment.

It is also unclear how the amount $20,448.35 was derived. New York State Constitution Article 6 requires civil courts to be courts of record. New York City Charter §1046 requires record for an JHO's proceeding. As was exhibited to Amended Complaint the record made before Defendant on May 16, 2003 in New York County L&T Index No. 91440 02 was erased. There was no record of Defendant' rendering her "default judgment" against tenant. New York State Constitution thus prohibits any civil court proceeding without a record.

Also, such "default judgment" was rendered May 16, 2003 by Defendant against Dr. Griesz-Brisson for $20,448.35 without any supportive affidavit or service thereof as is required by CPLR §3215(f) and CPLR §3215(g)(4)(i). It never happened. There is no affidavit.

New York's CPLR §3215(b) requires, "The judgment shall not exceed in amount or differ in type from that demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305."

Defendant' "default judgment" rendered against Dr. Griesz-Brisson only, was approximately $13,000 over the amount claimed in the petition.

Defendant then enforced that judgment against Dr. Griesz-Brisson for $20,445.35 and possession of premises, with a warrant of eviction she then added Kendra Musgrave's to, against whom the action had been dismissed with

prejudice, and whose residence was outside her geographical bounds, and as a partner joined in interest to Dr. Griesz-Brisson, as well as John Doe and Jane Doe as tenants. In fact, John Doe and Jane Doe undertenants was specifically crossed out, as was exhibited to Kendra Musgrave's Complaint and Amended Complaint.

As argued in appellant's brief it is a misdemeanor in the State of New York to declare a partnership when none exists.

If this does not amount to a clear absence of jurisdiction, then that doctrine can only be truly applied to a Libyan judge appointed by his colonel, who enters the United States by some covert method, and starts issuing edicts and proclamations in the middle of the night.

IX. COURT FAILED, TO PROTECT DOCUMENTS, EVIDENCE, AND PRIMARY WITNESS TO BE USED FOR TRIAL, WHICH WAS UPHELD BY SECOND CIRCUIT, THUS DENYING PLAINTIFF DUE PROCESS.

Sarbanes-Oxley Act of 2002, P.L. 107-204, July 30, 2002, requires the preservation of documents to be used for trial. Plaintiff's only evidence was the underlying case NYC91440 02 and such documents and stored information of tenant. Without access to legal research, and not within time Plaintiff had to file action, without access to legal research, Plaintiff copied wholesale tenant's legal arguments with its New York citations of statute and caselaw, as is evidenced by her Complaint and Amended Complaint. Sometimes Plaintiff changed pronouns to fit her case, other places she did not. Self-evidently, Plaintiff's needed such information and record to proceed but to prove a negative, to enjoin such warrant of eviction, which is unavailable to the public, until Plaintiff's name was removed. As raised to Second Circuit, without such items, including, the record being her primary witness,

as well as tenant, then unavailable, Plaintiff could not proceed.

Wherefore, after being denied access to the law, Plaintiff was then denied access to the court, any court, by order of Second Circuit below. To date, Plaintiff has not received restoration for the bank account illegally seized with any judgment served even to Plaintiff's bank. Whatever property Plaintiff could hope to obtain or preserve is then at risk without recourse; and for any debts tenant may have incurred, or, anyone else, for that matter, for Defendant's warrant of eviction.

CONCLUSION

Consistent through the cause of action and through this proceeding are gross violations to Plaintiff's civil rights, then denied access to proof thereof, but to protect constitutional guarantees, all the while Plaintiff is forced to prove a negative; and then finally denied access to any federal court for repair under federal statute, by Order of Second Circuit under the Rooker-Feldman doctrine of abstention, and when Plaintiff has no legal standing to appeal an administrative decision she was ruled a stranger to.

That this is what Rooker-Feldman doctrine has become, needs to be addressed by this Court for the good of the nation and in the interest of justice. There is simply no other court to repair to.

Respectfully submitted,

Kendra Musgrave 5-20-05

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303-452-2854

IN THE

SUPREME COURT OF THE UNITED STATES

KENDRA MUSGRAVE,

Petitioner(s),

against

INEZ HOYOS, HON., ADMINISTRATIVE LAW JUDGE, HOUSING PART Q, CIVIL COURT OF THE CITY AND COUNTY OF NEW YORK,

Respondent(s)

On Petition For Writ Of Certiorari to the
United States Court of Appeals
For the Second Circuit

APPENDIX

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TABLE OF CONTENTS

Order of the United States Court of Appeals for the Second Circuit, December 21, 2005. ..... A-1

Order of the United States Court of the Southern District of New York, September 18, 2003 ..... A-4

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHERCOURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR INANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 21st day of December, two thousand and four.

PRESENT:
Hon. John M. Walker, Jr.,
Chief Judge,
Hon. Rosemary S. Pooler,
Hon. Richard C. Wesley,
Circuit Judges.

----------X

No. 03-9005(L), 03-9219(con); 03-9201(con)

KENDRA MUSGRAVE,
Plaintiff-Appellant,
v.
INEZ HOYOS, Hon., Administrative Law Judge, Housing Part Q, Civil Court of the City and County of New York,
Defendant-Appellee.

----------X

APPEARING FOR APPELLANT: Kendra Musgrave, pro se, Thornton, CO

APPEARING FOR APPELLEE: Michelle Aronowitz, Deputy Solicitor General (Eliot Spitzer, Attorney General for the State of New York, Carol Fischer, Assistant Solicitor General, on the brief), New York, NY

Appeal from the United States District Court for the Southern District of New York (Gerard E. Lynch, District Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is AFFIRMED.

Plaintiff-appellant Kendra Musgrave, pro se, appeals the September 25, 2003 judgment of the district court dismissing Musgrave's action against New York City Housing Court Judge Inez Hoyos for lack of subject matter jurisdiction. Musgrave's complaint, filed pursuant to 42 U.S.C. § 1983, alleges that Hoyos violated her civil rights by, inter alia, issuing a default money judgment and eviction order against Musgrave. We review de novo a district court's determination that, as a matter of law, jurisdiction does not exist. See Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996).

Having carefully reviewed the record and the parties' arguments in this case, we agree that the district court lacked subject matter jurisdiction over this complaint.

As an initial matter, any decision as to the merits of Musgrave's claims would necessarily require the district court to review the propriety of Judge Hoyos' orders, a task the lower federal courts are not empowered to do. See District of

Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983) (holding that district courts "do not have jurisdiction . . . over challenges to state court decisions . . . even if those challenges allege that the state court's action was unconstitutional"); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) (holding that district court may not sit in direct appellate review of a state court judgment because "[t]he jurisdiction possessed by the District Courts is strictly original").

In addition, as the district court observed, it is well settled that judicial officers like Judge Hoyos are entitled to absolute immunity from civil suit for any acts taken in their official capacities. Pierson v. Ray, 386 U.S. 547, 554 (1967) (holding that judges could not be held liable for damages under § 1983, even for allegedly unconstitutional acts). This immunity serves to preserve judicial independence by shielding judges from the inhibitory threat of economic sanction. See id.; Hili v. Sciarrotta, 140 F.3d 210, 213 (2nd Cir. 1998). As a consequence, persons claiming to have been injured by judicial misconduct must seek alternative forms of relief such as state appellate or collateral review, judicial misconduct or disciplinary proceedings, or working to prevent the judge's re-election.

For the foregoing reasons, the judgment of the district court is hereby AFFIRMED and Musgrave's motion to strike appellee's brief is DENIED.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By:

Lucille Carr, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

KENDRA MUSGRAVE,
Plaintiff,

v.

INEZ HOYOS, Hon.,
Administrative Law
Judge, Housing Part Q, Civil Court
of the City and County of New York,
Defendant

----------X

03-CV-5994 (GEL)
ORDER

GERALD E. LYNCH, District Judge:

In this Civil Rights action, plaintiff Kendra Musgrave alleges that defendant The Hon. Inez Hoyos, a Judge in New York City Housing Court, violated her due process rights by adding her name to a default money judgment in connection with an eviction proceeding. Judge Hoyos has moved to dismiss the complaint under the Rooker-Feldman doctrine and on the basis of a judge's absolute immunity from suit. The motion will be granted.

Even accepting as true the allegations of Musgrave's complaint, as is required in considering a motion to dismiss, this Court has no power to grant her relief. The acts complained of here were clearly "within [the] judicial jurisdiction" granted to Judge Hoyos. Pierson v. Ray 386 U.S. 547, 554 (1967). Therefore, she is immune from suit on account of them. Id. Furthermore, what Musgrave seeks, essentially, is review of Judge Hoyos's decision to enter a judgment against her. However, "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). Plaintiff's

remedy, if any, must be with appellate review of the judgments entered against her within the state court system, id, at 476, and, if not thereby satisfied, by seeking review in the United States Supreme Court, id at 482.

Accordingly, the complaint is dismissed for lack of subject matter jurisdiction.

SO ORDERED

DATED: New York, New York
September 18, 2003